# Judicial Communications Office

**21 FEBRUARY 2018**

# COURT DISMISSES CHALLENGE BY PRECIOUS LIFE

## Summary of Judgment

Mr Justice Colton, sitting today in the High Court in Belfast, dismissed a challenge by a member of the pro-life "Precious Life" group against the PSNI's decision to issue and serve Police Information Notes on her in respect of a series of protests outside the Marie Stopes Clinic in Belfast in 2014.

BM1, the applicant, is a member of the "Precious Life" group which holds "pro-life" or anti-abortion views. She participated in a number of "prayer vigil" protests near the Marie Stopes Clinic in Belfast on various dates in 2014. The protests resulted in heated interactions between the protesters and those working in or visiting the clinic. A number of complaints and counter-complaints were made by the respective parties to the PSNI who issued the applicant with six Police Information Notices ("PINs"). The PINs were stored on the PSNI electronic NICHE database but were subsequently "deactivated" and later "deleted". In these proceedings, the applicant challenged the PSNI's decision to issue and retain the PINs.

A PIN is a non-statutory notice issued by police as part of its function to prevent and detect crime in connection with the offence of harassment. At the relevant time the issuing of PINs in this context was governed by PSNI Service Procedure SP1 2012 which is described as the "Police Response to Stalking and Harassment" ("the Procedure"). In accordance with this procedure each of the PINs in this case advised the applicant that a complaint had been received about her behaviour "to make [her] aware that if the kind of behaviour were to continue then [she] would be liable to arrest and prosecution". The PIN stated that it was neither a court order nor a criminal record but that it would be kept by the police for the purposes of any future investigations and retained in accordance with national guidelines on the management of police information.

Counsel for the PSNI submitted that the PIN fulfils two related purposes: deterrence and the basis of evidence (if the behaviour continues the fact that the notice has been served can assist in proving that the recipient "knew or ought to know" that the behaviour amounted to harassment). The PIN advises the recipient that a complaint has been received and alerts them to both the identity of the complainant and the nature of the unwarranted behaviour. Mr Justice Colton summarised the circumstances surrounding each of the PINs in paragraph [36] of his judgment. The complaints were made by the Director of the Marie Stopes Clinic and members of staff.

The applicant challenged the decision by the PSNI to issue and serve the PINs on the following grounds:

- Breach of the common law right to procedural fairness;
- Failure by the PSNI to follow its own policy in relation to the issuing of PINs;
- Breach of her Article 8 rights in both the issuing and retention of PINs on the PSNI database.

The essential argument on behalf of the applicant was that as a matter of law before any of the PINs were issued she should have been given an opportunity to respond to the complaints made against her. Her counsel claimed that a basic requirement of a full investigation must at the very least involve interviewing the applicant and providing her with an opportunity to put her version of events. Mr Justice Colton was not persuaded by this argument referring to paragraph 4 of the Procedure which provides that before a PIN is given to an alleged perpetrator, this process should be explained to the victim, a copy of the notice given to them, their views sought and recorded. He said that it makes no mention of seeking the views of the alleged perpetrator.

The judge then referred to paragraph 7 of the Procedure which provides guidance to police in cases where there is reason for suspicion about the veracity of the allegation of harassment where there are counter allegations. Paragraph 7 requires that there be a full investigation of an allegation of harassment unless there is sufficient evidence to support grounds for suspicion that the allegations are in some way false or misleading. The paragraph states that "in most cases, early concerns about the integrity of an allegation can only be confirmed or refuted by means of a review of the evidence later in the investigation". Mr Justice Colton did not consider that the requirements to "fully investigate" an allegation of harassment relate to the pre-PIN phase of the investigation. He said that in this case there was a full investigation of the entirety of the allegations and counter-allegations arising from this process and a report submitted for prosecution. In addition two PINs were served on members of staff employed by the clinic arising from complaints made against them.

The applicant also argued that there has been procedural unfairness in the issuing of the PINs. She claimed that the PSNI did not carry out any adequate investigation into the underlying circumstances and/or any complaint/allegation made, secondly that she was not provided with any or adequate opportunity to make any submissions or representations prior to the issue or service of the notice and thirdly there was no opportunity to appeal or review the PINs. Mr Justice Colton, however, considered that the contents of the statements of the complainants, together with the other evidential material obtained in the form of body camera material and CCTV material were sufficient to justify a consideration of the issue of PINs.

The judge commented that the fundamental issue on procedural unfairness is whether or not before issuing them the PSNI should have provided the applicant with an opportunity to respond to the complaints. The applicant claimed that the basic requirements of procedural fairness would have required an opportunity for her to respond in advance of each of the PINs being issued and also provide her with an opportunity to challenge, appeal or review the PIN after it had been issued. The failure of the PSNI to do so in this case, she argued, constituted a breach of her common law right to procedural fairness. Mr Justice Colton said this was precisely the type of dispute in which consideration should be given to the use of PINs as a means of policing the ongoing interaction between the complainants. In these circumstances the two purposes of deterrence and potential evidence in criminal proceedings were clearly in play. It was essential to consider the factual context of each case. The PINs about which the applicant complains were issued in the context of an ongoing public protest. The protest presented a significant policing challenge to the PSNI. During the course of those protests members of the PSNI were in contact with both the applicant and other protestors as well as those associated with the clinic, each of whom were making claim and counterclaim.

In respect of each complaint, members of the PSNI took statements of complaint and also sought CCTV by way of supporting evidence. After the decision was made to issue each of the PINs arrangements were made for service and this included service at the applicant's solicitors' office. Mr Justice Colton said it was significant, although by no means determinative, that there was no legal challenge to the issue of the first PIN on 14 March 2014 until 3 March 2015 when the applicant's solicitors challenged all of the PINs issued by the police up to and including the one on 4 February 2015. He considered there was a lawful basis for the issuing of the PINs on the material available to the police in the form of official statements of complaint and CCTV evidence. The consistent response of the applicant to the receipt of the PINs which could be categorised as one of denial and counterclaim suggests that little would have been gained from speaking to the applicant in advance of issuing the PINs. The judge said it was also clear that the police acted impartially in the matter. PINs were also issued on the basis of complaints made by the applicant. In addition the PSNI prepared a comprehensive report setting out all complaints with relevant statements and CCTV evidence for prosecution.

Mr Justice Colton said it was also important to consider the form and the content of the PINs that were actually issued. The format explains what harassment is and makes it clear that the police are not commenting on the truth of the allegation. Furthermore the notice goes on to explain the purpose of the PIN and underlines the fact that the letter is not a court order or a criminal record. It makes no use of the word "warning". The judge said it must however be acknowledged that the issuing of a PIN is a formal police action. It is not something which can be issued routinely when a complaint is made. The issuing of the notice involves some evaluative exercise by the police. It is essential therefore that when such a notice is challenged

the court should scrutinise the evidential basis for the issuing of the PIN and the justification put forward by the police:

> "Overall in the context of what was an ongoing investigation in relation to potential harassment it seems to me that the issue of the PINs on both the applicant and on persons associated with the clinic was an appropriate and proportionate way of dealing with the dispute. There was an evidential basis for the decision to issue each of the PINs and their use was in accordance with the purpose of the Procedure of the Police which established their use. It may well be the case that it would be better if the police were to speak to someone such as the applicant before issuing a PIN but in the circumstances of this case I do not consider that the failure to do so renders the PINs unlawful. I have therefore concluded that the issue and service of the PINS in this case were lawful."

**Article 8**

The applicant argued that both the issue and the retention of the PINs constituted a breach of her Article 8 rights and was therefore a breach of Section 6 of the Human Rights Act 1998.

Mr Justice Colton said he was satisfied that by retaining the PINs on its database the respondent has interfered with the applicant's Article 8 rights. It is also clear from the authorities that it is the retention of the information that constitutes the interference with the applicant's private life. In considering the Article 8 issue the court should look at the police conduct as a whole. He said he had come to the firm conclusion that it is the retention of the PINs and not the mere issuing and serving of the PINs that engages the applicant's Article 8 rights.

The judge said the real question is whether the interference with the respondent's Article 8 rights was proportionate to the objective of maintaining public order and preventing or detecting crime. He felt that the policing need for the retention of the records given the ongoing nature of the complaints and counter-complaints by the applicant clearly justified the retention of the PINs for a period of time. The question was whether or not the period of time in this particular case was justified. All of the PINs were deleted on 11 February 2016, having been "deactivated" in March 2015, April 2015 and August 2015. The judge said he could not see how the period of retention in this case could be deemed to be in breach of the applicant's Article 8 rights.

Mr Justice Colton noted that he had some concerns about the extent to which the police have published an easily accessible administrative code in relation to the retention of this type of data. He referred to the "Information Management Policy" issued by the PSNI on 9 December 2015. This document, which is publicly available, does not deal specifically with periods of time for the retention of PINs or for their

review but does refer to the legal requirement for effective management of all PSNI records with specific reference to the Data Protection Act 1998. Appendix G of the Procedure document dealing with PINs indicates that documents should be stored "in accordance with the Records' Management Policy".

The judge said it was clear that in this case the respondent did review the retention of the material by first deactivating the various PINs and subsequently deleting them. Thus it is clear that the policy was sufficiently flexible to ensure that the PINs were not retained for an excessive period of time. He noted that interim guidance issued by the PSNI post 2014 now provides for automatic reviews of PINs after 6 months from the date on which the PIN was issued.

Mr Justice Colton accepted that there was a valid reason for the retention of the PINs in this case. They served the potential purposes of deterrence and retention of evidential material. The fact that a PIN had been issued and the alleged conduct on which it was based can be extremely useful to inform future police decision making in relation to the complainant, recipient or known associates:

> "Both the applicant and members of staff in the clinic were the subject of a report to the PPS. Retention of some of the PINs was therefore important for evidential purposes. The applicant formed part of a group which was engaging in protests outside the clinic over a prolonged period of time. The protest had given rise to numerous complaints by a range of individuals against a range of protestors. Monitoring the protest required a considerable amount of police time. Retention of as much information as possible was therefore important and helped informed decision making about the protest and the retention of information in this case."

The judge said that, in terms of guidelines for the period of time during which PINs can be retained, it has to be acknowledged that the range of circumstances in which a PIN may be issued and retained is so varied that it would be difficult to prepare guidelines on the duration of retention and the precise content of the information which should or should not be retained. In terms of the reviewing of the retention of such materials, apart from the discretion exercised by the PSNI the respondent relied on the provisions of the Data Protection Act 1998.

Mr Justice Colton commented that the police clearly hold information subject to the requirements of that Act including the Data Protection principles. These include a requirement that the data is processed "fairly and lawfully" and held only for a "relevant purpose". Once obtained it cannot be processed in a manner incompatible with these purposes. The data cannot be retained for longer than is necessary. Access to the police database is limited to the authorised police officers and members of staff, who are subject to disciplinary and/or criminal sanction in the event of unauthorised access or use of the information retained on an NICHE. Importantly the respondent argues that the applicant was aware of the existence of

the PINs and that they had been retained by the police on its database. The judge said it was open to the applicant and anyone in her position to make a complaint to the Information Commissioner at any time to argue that the continued retention of any of the PINs was unlawful contrary to the first data protection principle.

The respondent stated that the availability of an alternative remedy should defeat the judicial review application in this case. The PSNI argued that disputes of this nature should be resolved by the Information Commissioner rather than by way of judicial review:

> "I recognise that this judicial review sought to challenge the lawfulness of the decision to issue PINs, in respect of which the Information Commissioner has no power to intervene. The decision to delete the PINs was made after the issue of these proceedings. However, in terms of the issue of retention it seems to me that there is an adequate alternative remedy in the form of the powers granted to the Information Commissioner under the 1998 Act. This application focused on the retention of the PINs which were deleted on 11 February 2016. As is clear the PSNI has retained the "other documentation" associated with all the complaints arising from the incidents throughout 2014 which were prepared for a report for prosecution. I accept that the retention of this material is lawful and subject to proper regulation and control."

Mr Justice Colton refused the judicial review.

**NOTES TO EDITORS**

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (www.judiciary-ni.gov.uk).

**ENDS**

If you have any further enquiries about this or other court related matters please contact:

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